

IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

FILED

2008 JUL 10 PM 4:23

RICHARD L. ROBERTS, CLERK

STATE OF TENNESSEE, *ex rel.*)
ROBERT E. COOPER, JR.,)
ATTORNEY GENERAL AND REPORTER,)

v.)

No. 08C3725

EDUCATIONAL RESEARCH CENTER)
OF AMERICA, INC., a Pennsylvania not)
for profit corporation,)

Respondent.)

PETITION

The State of Tennessee, by and through Robert E. Cooper, Jr., the Attorney General and Reporter, (hereinafter "Attorney General"), at the request of Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance, (hereinafter "Division") files this Petition pursuant to Tenn. Code Ann. § 47-18-107 of the Tennessee Consumer Protection Act of 1977 (hereinafter "the Act"), and respectfully shows the Court as follows:

1. Educational Research Center of America, Inc. ("ERCA") conducts surveys of high school and junior high school students throughout the United States through teachers and counselors, (hereinafter "educators") who respond to ERCA solicitations by agreeing to give students ERCA surveys to complete and which, once completed, are returned by the educators to ERCA.

2. ERCA student surveys ask high school students to provide information, such as

their ethnic background, religious affiliation of a school they would choose if they had to choose one with a religious affiliation, level of high school courses taken, honors won or honors programs involved in, sports and other extracurricular activities, and other information. ERCA surveys directed to junior high school students seek similar information.

3. According to ERCA's website:

- a. Non-personally identifiable information about students learned through ERCA's survey is compiled in ERCA's annual survey report that is made available free of charge on-line and through the mail upon request.
- b. Personally identifiable information about students collected from the ERCA survey is marketed by ERCA to colleges, universities and other educational institutions.
- c. Personally identifiable information about students is also marketed by ERCA to certain other entities nationwide that wish to contact high school students or to help others do so, including businesses that market products and services to students and student achievement recognition organizations.

4. In its mailings addressed to high school and junior high school educators in 2006 with its survey packets, ERCA made the following representations in cover letters in an attempt to entice educators to have their students complete and return ERCA surveys:

- a. In large bold print at the top of the letter included with one mailing, "Take just 10 minutes to make a difference in your students' lives and we will send you a Staples Gift Card worth \$40 as a thank you." The same letter included the statement, "All you have to do is to ask at least 50 of your students to fill out the

enclosed ERCA College Planning Profiles and return them to us in the postage-paid envelope provided.”

b. In large bold print at the top of a similar letter included with another mailing, “Take just 10 minutes to make a difference in your students’ lives and we will send you a Visa Gift Card worth up to \$50 as a thank you.” The same solicitation represented that educators who had 75 or more students return completed ERCA surveys would receive a Visa gift card worth \$50 and those who had 50-74 students return completed ERCA surveys would receive a Visa gift card worth \$25.

5. ERCA mailed other survey solicitation packets to U.S. educators in 2006 with similar offers of gift cards from OfficeMax.

6. Although the ERCA solicitations referenced above in paragraphs 4 and 5 represented that educators could use the gift cards to purchase supplies for their classrooms, educators could have used the gift cards to purchase items or services for their own personal use, completely unrelated to their occupations as educators.

7. Thousands of educators from around the U.S. received gift cards from ERCA in 2006 in exchange for the completion and provision of student surveys to ERCA in sums ranging from \$5 to \$50 each.

8. In its packet of materials sent to U.S. educators:

a. ERCA included a survey to be completed by the educators which included a disclosure regarding the use of the survey response and information about how educators may opt out of ERCA using the survey response to contact the educator

about education-related products or services.

b. ERCA included a cover letter to the educators which disclosed that students could opt out of ERCA sharing their survey responses, including with commercial entities that may solicit the students for the purchase of products or services, and how students could opt out.

c. ERCA disclosed in the survey form to be completed by students that their survey responses would be shared with entities for several purposes, including with commercial entities that may solicit the students for the purchase of products or services, but did not disclose to the students how they may opt out of the sharing of that information.

d. ERCA did not include any other written information to be provided to students which advised them of their right to opt out of ERCA sharing of their survey responses.

e. ERCA did not include any written material to be provided to the parents of the students from whom ERCA sought questionnaire responses regarding how their children's survey responses would be used or about opt-out rights.

9. Hundreds of thousands of initial solicitation mailings were sent by ERCA to U.S. educators in 2006.

10. Hundreds of thousands of completed student surveys were received by ERCA in 2006.

11. The Division and the Attorney General, acting pursuant to the Act, have investigated in conjunction with a multistate working group of Attorneys General certain acts and

practices of Respondent. Upon completion of such investigation, the Division has determined that certain of Respondent's acts and practices described in this Petition, constitute unfair and deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of Tenn. Code Ann. § 47-18-104.

12. Respondent neither admits nor denies the allegations in this Petition.

13. Upon completion of its multistate investigation, the Division requested that the Attorney General negotiate, and if possible accept, an Assurance of Voluntary Compliance in accordance with the provisions set forth in Tenn. Code Ann. § 47-18-107.

15. The Attorney General entered into negotiations with Respondent and the parties have agreed to, and the Division has approved, the Assurance of Voluntary Compliance filed contemporaneously herewith.

16. In accordance with the provisions of Tenn. Code Ann. § 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

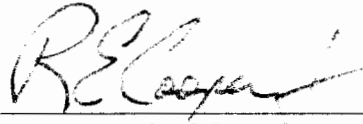
17. The Division, the Attorney General, and the Respondent have jointly agreed to the Assurance of Voluntary Compliance and join in its filing.

PREMISES CONSIDERED, Petitioner prays

1. That this Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-101 and 47-18-116.

2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Tennessee Consumer Protection Act.

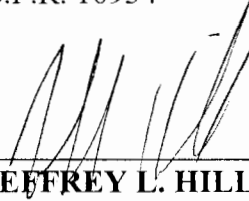
Respectfully submitted,



ROBERT E. COOPER, JR.

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